Remarks of Michael K. Powell
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Good afternoon to all of you. It's a pleasure to be here. You're going to forgive me if I ramble a bit. I just flew in from Washington where it's 20 something degrees. I checked into my hotel room, immediately saw the benefits of sitting out on the deck, looking over my notes and proceeded to have half of them blow over the top and into the ocean. So you're watching me give a speech on the fly, which I sometimes enjoy doing.

You know, it's really an interesting period for all the reasons that the previous two speakers spoke of. And as I read about them in the paper, it always amazes me. The telecom business is difficult. Telecom policy is extremely complex. But you would never gain an appreciation of that from what you read. We have a tendency to want to reduce complexity to simple story lines: good versus evil; everything is black and white; assuming that policy can be reduced to that story, put into a paragraph, put into a sound bite.

Of course that's not possible. It's much more complex and difficult than that. One of the challenges that you all face as business leaders, and we face as policymakers, is to deal with that complexity and bring meaning to the welfare of consumers through our judgments. It also means that you have to be willing, as we are today, to come down here and speak first hand about the difficult judgments we're making.

And so I'm thrilled to be here at CompTel, and I'm here because competition's here. I think it's amazing that I continue to have to take podiums all across the country and say, yet again, "The Federal Communications Commission has never wavered in its commitment to competition. Not once." And this is more than hyperbole and platitudes --- this can be demonstrated through the proof of our actions. The 1996 Telecommunications Act and the policies that we implement in its wake are difficult to balance the interests of incumbents and new entrants in a way that enhances consumer welfare. This isn't always easy. It's often muddled and confused and even at times internally inconsistent. But the goals never vary. Competition remains as critical an objective of this Commission as any that proceeded it.

But where's the proof? Give me a chance to review some of the things that have occurred during my tenure as Chairman of just this short year. When we embarked on this mission, we took a commitment to first and foremost listen intensely to the challenges of the competitive industry as it went through one of the most severe downturns in economic history. This country may be in a mild recession but this industry across the board struggles through severe depression. And we struggle to understand and comprehend the reasons why, to understand fully what had happened and what might still

happen, and to see what role, if any, regulators have in trying to improve the lot. Through your representatives of this outstanding organization, and through a number of efforts, we embarked on trying to gain that understanding.

In the first spring of my tenure we sat down with the CEOs of a handful of competitive companies for an entire afternoon, with me one-on-one, no holds barred. It was the first kind of CLEC CEO summit of its kind. We asked hard questions. We sought difficult-to-achieve answers. But out of those meetings, we produced a vision, an approach to competition that continues to serve us today. Here are the things I heard.

The first was, "uncertainty kills us." It is the functional equivalent of investment risk. A bad decision is better than no decision, or a decision hanging in suspended animation, while we burn through our cash flows and seek more capital and have those investors tell us, "Well we just don't know what's going to happen." We were urged to act and act swiftly, not just on the easy things, but on the difficult things. And so we set out to do so.

If you'll remember a year ago, almost, the Commission had been sitting on a remand from the reciprocal compensation decision for over a year. It was sucking the life-blood out of this industry. Capital markets had assumed that this compensation would be cut off cold turkey. I was urged repeatedly by the competitive industry, "Do something. Get this proceeding finished." And we did. We acted quickly to resolve it, and even provided a reasonable glide path to avoid the kinds of shock that immediate termination would cause, contrary to the expectations of so many, including the investment community.

We heard again, through the year, challenges that CLECs faced on access charges --- companies, through a series of lawsuits and self-help, refusing to pay access charges due competitors. Again, we were urged to bring some clarity to this area, and we did.

But when I listened more and more to the industry, I heard a theme that recurred over and over and over again as the most preeminent challenge --- enforcement. I would challenge CEOs – "What rule do you need that you do not have?" Very rarely did I get a specific answer for a new rule. I got the cry and the plea to enforce the ones more effectively that exist. We took that to heart. We've empowered the Enforcement Bureau. We have been the first Commission to impose major fines on Bell operating companies for local competition failures, including recently a notice of proposed liability in the neighborhood of $6 million. We went out and hired the best litigators we could get. The Commission hired top law firm partners as prosecutors to continue to drive the enforcement effort internally at the Commission. I told the Chief of the Enforcement Bureau, "Back-logs are unacceptable and intolerable." We've reduced them to near zero. We set out to try to speed the enforcement process. I would be the first to admit we have further to go. But we now do it at a fairly expeditious clip and certainly quicker than judicial remedies typically provide.

But we've heard, too, this concern: "Fines are great. But to a large incumbent, they're just the cost of doing business." I couldn't agree more. It's one of the reasons that the only thing I've had to do with the Tauzin-Dingell bill was to urge legislative action to increase the penalties of the Federal Communication Commission ten-fold, and I'm pleased that that was an amendment that was agreed to in the House debate. And I remain confident under the leadership of Congressman Upton -- we will get enforcement legislation this year.

And what about those 271s? Interestingly enough, if you really look at our record over the last year or so, we have looked disfavorably on nearly as many as we have approved. We approved 5 section 271 filings last year, but 3 were withdrawn in the face of rejections. And several of the states we did approve were ones where the state's application had been rejected or withdrawn before. That will remain a hallmark of the Commission under my leadership.

Another thing we heard is: "Rulemakings and proceedings on critical issues tend to peck us to death, like a duck." We need more comprehensive understanding of many of these policy areas and challenges. Rather than dealing with compensation issues in a piece-meal fashion, the Commission initiated notices of proposed rules to develop inter-carrier compensation regimes that would provide clarity in this area.

But most importantly, of which I'm proud, we heard the critical call for more clarity and more precision in performance measures. The Commission initiated a proceeding to explore national performance measures that would provide a clear roadmap for those obligations and those standards for achieving unbundled network elements. One of the reasons I was so supportive of doing so, even though one might accuse me of being very regulatory in doing so, is that I believe that the precision in those standards needed to be clarified in order to further make enforcement effective. I've prosecuted enough enforcement cases to know they get mired quickly in the ambiguities of performance requirements. Greater clarity in the national performance standards will lead to swifter and tougher enforcement as well. And as Russell Frisby mentioned, the Commission has embarked on the triennial review of unbundled networks elements as it's obligated to do under the statute and as the previous Commission committed to.

I would urge you never to see these proceedings as one-sided; they ask the question in both directions, whether market developments have taken away the need for an element, or whether market developments have pointed out the greater need for more elements. All of those questions are valid in that proceeding and I'd urge you to engage in it fully and forcefully.

Indeed we don't rest on just those things. We continue to listen. I just heard Russell Frisby mention an area that we've begun to get very focused on, and that is the area of rights of way. This too is a complicated balancing act between the legitimate rights of localities and the management of their rights of way, and the competitive imperatives of federal policy. In our 706 Report, we articulated quite clearly our growing concern about rights of way as a barrier to effective deployment of new services. We

have begun to work aggressively with our Local State Government Advisory Committee, seeking solutions and improvement in rights of way across the country. The Commission in fact is considering a number of public forums to be held this year to tee up and put the spotlight on these issues. Indeed the Commission may very well file legal amicus briefs in proceedings pending in Federal courts dealing with these rights of ways questions. We've heard these concerns, we share them and are looking for ways to act on them.

And not one to shy away from controversy -- what about broadband? Let's face something --- consumers want it in their neighborhoods. They want it available, they want it reliable, and they want it affordable. The Commission's attempt to develop a coherent broadband policy intends to aggressively pursue a regulatory framework that is comprehensive, and clear and is designed to incent deployment. It is a policy direction designed to promote any carrier, using any technology, using any mode, who's willing to provide broadband infrastructure to the American home and to consumers.

Contrary to the hyperbole, our policy is not one of preferred regulated monopoly or duopoly. One cannot fairly read our broadband order in that regard. We continue to embrace competition and competitive alternatives, even inter-modal and intra-modal. Let's be clear about what our proposed order does do, or purports to do, and what it does not do.

What does it do? It does attempt to clarify the regulatory classifications under the statute. This is something I'd like to emphasize, that distinguishes what the Commission is doing from the heated debates about Tauzin-Dingell. Congressmen can change the statute. The Commission must act within it. Our effort is an effort to make a coherent and clear regulatory framework for this new and emerging set of services in the context of the statute itself, not inspite of it. We do examine the implications of any tentative conclusions we make, and we openly consider not only deregulatory remedies but arguments for further regulation in the promotion of critical objectives. And continues to promote the enormous values of universal service.

But what you really need to hear through your concern and anxiety is what the broadband item does not do and could not do. It does not, nor could it, alter any rights that a competitive telecom carrier otherwise has under the statute. Those rights are conferred by Congress and cannot be altered by us. This is the critical difference between our actions and the statute. Even if you're a competitive information service provider, you still will have access to key telecom inputs under the Commission's computer inquiry decisions. We stated expressly in the item that those continue to be applicable. The Commission has admitted that it will consider what the appropriate framework is, given the changes in technology and the state of competition. But it hasn't wavered in its commitment to apply those fully and to consider prudently any changes that are urged.

Let me just conclude this way. Yes the item is bold, because it has to be. It will ask tough questions, because it should. And it forces the industry to work hard to get and provide serious answers, which I know you will. And that is also how it should be. But I

caution you to respond in substance and meaningfully and not succumb to the classic storytelling of good and evil. It's not that simple. And indeed this industry is critical to the item's objectives, and your responsible and reasonable responses to the item are critical to us making sound and thoughtful judgments that will guide these areas in years to come.

I am thrilled to be here. I am proud of this industry and I'm more than happy to take the opportunity to have that dialogue in questions that follow.

Thank you.